

REMARKS

Claims 11 and 21 have been amended. Dependent claims 12 and 13 have been canceled and their subject matter incorporated into independent claim 11. New claim 29 has been added. Support for these amendments and the additional claim can be found in the Specification at least on page 7, lines 20 – 27, on pages 9 – 12, as well as in FIGS. 13, 14, and 19 – 24. No new matter has been added. In light of the above amendments, claims 1, 3 – 5, 7 – 11, 14, 15, 17 – 23, 25, and 29 are currently pending in the subject application.

In the Office action mailed October 20, 2006, claims 1, 11 – 15, 17, 21 – 23, and 25 were rejected under 35 U.S.C. 102(b); and claims 3 – 5, 7 – 10, and 18 – 20 were rejected under 35 U.S.C. 103(a). Favorable reconsideration of the subject application is respectfully requested in view of the following remarks.

Claims 1, 21 – 23, and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,017,220 (“*Chernivsky*”). This rejection is traversed since the reference does not teach, disclose, or suggest all of the features of independent claim 1 (a medial portion that is angled rearward with respect to a plane including the two side portions by approximately 30°) or amended independent claim 21 (requiring the child support to include a substantially U-shaped lower frame section operable to receive and support the feet of an infant placed therein).

Regarding independent claim 1, *Chernivsky* does not disclose, teach, or suggest a medial portion that is angled rearward with respect to a plane including the two side portions by approximately 30°. The Examiner’s position appears to be that FIG. 2 of *Chernivsky* inherently possesses a angle of approximately 30°. This position, however, is not tenable. While the inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102, inherency may not be established by “probabilities or possibilities”. See MPEP § 2112. Thus, the fact that a certain thing *may* result from a given set of circumstances is not sufficient to establish inherency. See *id.* To establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. See *id.* *Chernivsky*,

while showing an angled back portion, neither discusses the degree of the angle nor the purpose for the angle. The Examiner, moreover, has not provided any objective evidence or cogent technical reasoning to support the conclusion of the inherency. Thus, although the Examiner *feels* Chernivsky *may* possess an angle of approximately 30°, without more, the rejection is improper.

In addition, Applicants can readily rebut the assertion that the *Chernivsky* reference discloses an angle of approximately 30°. Specifically, Applicants' own measurement of the rearward cant illustrated in Figure 2 of *Chernivsky* shows the frame cants rearward at an angle of 45°. This value clearly falls outside the claimed value of approximately 30°. Thus, the *Chernivsky* chair does not inherently possess the claimed rearward cant angular value.

Regarding amended Claim 21, *Chernivsky* does not disclose teach or suggest a lower frame portion that support the feet of an infant received in the seat. Chernivsky discloses a baby chair including a crotch strap 56 secured to the under side of a seat section 34. *See* FIG. 1. The crotch strap is positioned centrally along the seat "so that the legs of a child sitting in the seat may extend from the seat on both sides of the strap". *See* col. 3, lines 30 – 37. That is, the chair is configured to permit the feet of a child to dangle unsupported by the chair (it does not include a frame portion operable to support the feet of the infant).

Furthermore, the asserted horizontal frame 40 of the *Chernivsky* chair is not the equivalent of the claimed lower frame section. This frame, as Chernivsky explains on col. 2, lines 40 – 50, constitute arm rests 40 and an arm support 42 and, as such, can not function to receive the feet of an infant received in the seat. Since *Chernivsky* does not disclose, teach, or suggest a chair including a substantially U-shaped lower frame section operable to receive and support the feet of an infant placed therein, it is requested the outstanding rejection be withdrawn.

Thus, since *Chernivsky* does not disclose, teach, or suggest the features of independent Claims 1 or 21, these claims are considered to be in condition for allowance. Claims 3, 4, 5, 7 – 10, 22, 23, 25, and 29 depend, either directly or indirectly, from independent claims 1 or 21 and,

therefore, include all the limitations of their parent claim. These dependent claims are considered to be in condition for allowance for substantially the same reasons discussed above in relation to their independent claims and for further limitations recited in these claims.

Claims 11 – 15 and 17 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,951,360 (“*Fearon et al.*”). This rejection is respectfully traversed since the cited reference does not disclose, teach, or suggest the features of amended independent Claim 11 of, *inter alia*, an indicator comprising at least a first set of indicia and a second set of indicia, wherein in the first control position only the first set of indicia is visible and in the second control position only the second set of visual indicia is visible.

As an initial matter, the limitations of claim 13 have been incorporated into independent claim 11. It is important to note that dependent claim 13 was never properly addressed in the Office Action. Specifically, the Office Action is silent as to what elements of *Fearon et al.* constitute first and second sets of indicia, as well as how the mobile device of *Fearon et al.* displays only one set of indicia at a time.

Fearon et al. shows a mobile device 10 including a control unit 15 and rotating hub 40 with a series of hanging toys 50. The movement of the hanging toys 50 has been equated by the Examiner with the visual appearance of the present invention. The control unit 15 includes a housing with an operational mode control switch 130 that selects the operational modes of the device. For example, the ON position allows for the playing of a cassette or compact disc (as selected by the tape/cd selector switch 125), as well as for the synchronized movement of the hanging toys 50. The MOTION position engages both audio and movement of the hanging toys 50 when motion of the infant in the crib is detected. Finally, the SOUND position activates the movement of the hanging toys 50 when the device detects noise. Thus, in each mode (i.e., regardless of the position of the mode control switch 130), the hub 40 rotates the hanging toys 50. As seen in Figure 1, the mobile 10 connects to a crib 20 such that the rotating hub 40 and the hanging toys 50 are positioned over the infant received in the crib. From Figure 1, it is clear the

both the infant (in the crib) and a parent (outside the crib) view each of the hanging toys 50 as they are rotated about the hub 40.

In contrast, amended independent claim 11 requires a direct correlation between the position of the second switch and the set of indicia is visible to an operator of the second switch, and specifically, requires an indicator including multiple sets of indicia, wherein only one set of indicia is visible to the operator of the second switch at a time. As explained in the specification on pages 11 – 12, when the slide switch (i.e., the switch for selecting a sensory stimulus mode) is in a first position, the indicator ball rotates to display a first set of visual indicia (e.g., happy/sun indicia). Similarly, when the slide switch is positioned in a second position, the indicator rotates to display a second set of indicia (e.g., sleepy/moon indicia). In the first display position, only the happy/sun indicia is visible (i.e., the sleepy/moon indicia is NOT visible) to an operator of the slide switch. Similarly, in the second display position, only the second set of indicia is visible (i.e., the happy/sun indicia is NOT visible) to the operator of the slide switch. Thus, there is a direct correlation between the indicia displayed by the indicator and the position of the switch, with the indicator selectively hiding and showing a given set of indicia from an operator of the second switch.

In contrast, rotation of the hub 40 in *Fearon et al.* does not selectively show and hide indicia from an operator of the mode control switch depending on the position of the mode control switch 130. In fact, there is no relationship between the position of the mode control switch 130 and which hanging toys 50 are “displayed” to an operator of the mode control switch. Since the hub 40 rotates in each of the defined switch positions, eventually the hub will rotate to similarly position the hanging toys with respect to the infant. In other words, as the hanging toys 50 are rotated by the hub 40, they will inherently possess the *exact* same position, regardless of the modes selected by the mode control switch 130.

Thus, since *Fearon et al.* does not disclose, teach, or suggest the features of amended independent claim 11, this claim is considered to be in condition for allowance. Claims 14, 15, and 17 – 20 depend, either directly or indirectly, from independent claim 11 and, therefore,

include all the limitations of their parent claim. These dependent claims are considered to be in condition for allowance for substantially the same reasons discussed above in relation to their independent claim and for further limitations recited in these claims.

Dependent claims 3 – 5, 7 – 10, and 18 – 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Fearon et al.* in view of *Chernivsky* (or vice versa). These rejections are respectfully traversed. These claims depend either from independent claim 1 or independent claim 11. As explained above, none of the cited references disclose, teach, or suggest the features of independent claims 1 and 11. Consequently, these dependent claims are considered to be in condition for allowance.

In view of the foregoing, Applicants respectfully request that the present application be found to be in condition for allowance with regard to claims 1, 3 – 5, 7 – 11, 14, 15, 17 – 23, 25, and 29. However, if for any reason the Examiner feels that the application is not now in condition for allowance, she is respectfully requested to contact the undersigned to discuss any unresolved issues and to further expedite the disposition of the application.

Applicant hereby petitions for any extension of time that may be necessary to maintain the pendency of this application at any point during the prosecution. The Commissioner is hereby authorized to charge payment of any additional fees required for the above-identified application or credit any overpayment to Deposit Account No. 05-0460.

Respectfully submitted,

/Howard R. Richman/

Howard R. Richman
Registration No. 41,451

EDELL, SHAPIRO & FINNAN, LLC
1901 Research Boulevard, Suite 400
Rockville, Maryland 20850-3164
(301) 424-3640
Dated: January 19, 2006